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NO.: W-170 October 24, 1961

SUBJECT: Consular Convention with Japan

TO: The American Embassy, TOKYO

Ref: Embassy's Despatches No. 185 of August 28, 1961 and No. 284 of September 25, 1961

611.94421/9-2561

The Department has now had an opportunity to examine the referenced Despatches, with respect to the six formal meetings held with the Ministry of Foreign Affairs to resume negotiations on the long dormant consular convention.

It is apparent that the six negotiating sessions have managed to resolve a majority of the points unsettled prior to the resumption of negotiations on July 17, 1961. However, this series of meetings apparently has enabled the Japanese negotiators to propose quite a few deletions to agreed upon language of the Convention, the Minutes, and the Protocol; and also to propose numerous additional words or paragraphs to the Convention. The proposed deletions or additions are both of major and minor significance.

The Department's approval to resume formal negotiations on the basis of the long form draft (Deptel 143) was predicated upon the assumption (contained in G-1674 and Embtel 2113) that the long form embodied considerable area of agreement already reached; that the concurrences of other Japanese Ministries would be lost if there was to be a change in drafts at this time; and that the Foreign Ministry would prefer the long form in view of the "few" remaining unagreed paragraphs. Now, as a result of the many counter proposals of the Japanese negotiators, the Department is apparently faced with ~~what~~ what the Japanese hoped to avoid for themselves, viz., agreed upon language has now been rejected; concurrences of other departments and agencies of the United States Government may now have been lost; and the "few" unagreed paragraphs have now been substantially multiplied.

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Unless

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DRAFTED BY: L:L/A:LJHarris:ald 10/17/61

APPROVED BY: W. M. Cameron

CLEARANCES:
L/T - Mr. Whittington WW
U/PR - Mr. Mitchell
NA - Mr. Fearey
SCS - Mr. Flaherty

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Telegram Unit

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Unless the Japanese negotiators should be willing to withdraw their new counterproposals, relating to the substance of already agreed upon articles, and permit the Convention to be finalized on the basis of its general content prior to July 17, 1961, (with only minor areas of controversy from the pre-1961 negotiations remaining to be worked out) the Department would like the views of the Embassy upon the belief it would be best to abandon the long form convention, and strongly urge upon the Foreign Ministry the short form. Such a tactic could be fortified by the following considerations:

(1) Because of the span of time which the negotiations have now encompassed, the voluminous documents pertaining to the negotiations, and the succession of negotiators on both sides, it is extremely difficult for the Department, as we are sure it is for the Embassy, to determine the origins, meaning, or intent of any given article. Intelligent consideration of the Japanese counterproposals is therefore difficult, and serious problems are anticipated in finalizing the long form negotiations and subsequently explaining and justifying the Convention in the ratification process. Those who will have to interpret the long form Convention in the future will have an even more difficult time to explain what was meant by any given article. The use of the short form, and intensified negotiations thereon, might alleviate all of these problems.

(2) It is believed that the short form more cogently expresses modern consular practices and procedures. The simplified articles of the short form (contrary to Motoo Ogiso's statement reported in Embtel 2613) would be more easily interpreted and understood by all, and might achieve more satisfactorily needed acceptance by state authorities when local problems arise in taxation and immunities matters. At the same time, it has been U. S. experience that it is better not to attempt to deal with all administrative issues in consular conventions, but rather to leave some matters for subsequent administrative decision.

(3) For the above and other reasons, finalization of the negotiations on the U. S. side can be more readily and rapidly accomplished on the basis of a short than of a long form convention, assuming agreement can be reached on such problems as the relationship of the Ryukyus to the Convention, use of the most-favored-nation clause, etc., common to both forms.

The Department would appreciate the Embassy's comments and recommendations. Should the Embassy concur in the views expressed above, it is authorized to advise the Japanese negotiators of our concern over the reopening of many previously agreed provisions in the long form convention and the consequent prolongation of the negotiations, and of the Department's considered view that the negotiations should be shifted to the short form convention.

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